

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILED for RLB

JAN 10 2012

JULIA C. DUDLEY, CLERK
BY: *HMcD*
DEPUTY CLERK

CHRISTOPHER C. MOORE,
Plaintiff,

Civil Action No. 7:11-cv-00437

v.

MEMORANDUM OPINION

OFFICER SMITH, et al.,
Defendants.

By: **Hon. Jackson L. Kiser**
Senior United States District Judge

Plaintiff filed his complaint and an inmate account report in September 2011. The inmate account report reported financial data for March through part of September 2011. By Order entered September 23, 2011, the court assessed a \$350.00 filing fee and granted plaintiff fifteen days from the date of the Order to forward to the court a statement of his assets and a report regarding his trust account for the six months prior to September 2011. The court needed this information to determine a payment schedule, pursuant to 28 U.S.C. § 1915. Plaintiff was advised that failure to return the required paperwork would result in dismissal of this action without prejudice.

Plaintiff did not subsequently file any financial paperwork and, thus, did not comply with the conditional filing order despite the dismissal warning. Furthermore, the court cannot determine the appropriate filing fee assessment, pursuant to 28 U.S.C. § 1915(b), because his first inmate account report described the six-month period prior to October 2011, not the six-month period prior to September 2011. Accordingly, this action must be dismissed without prejudice for plaintiff's failure to pay the filing fee or properly document his application to proceed in forma pauperis. Plaintiff may refile his claims in a new and separate action at the time he can pay the \$350 filing fee or file the necessary documents to proceed in forma pauperis.

The Clerk is directed to send a copy of this Memorandum Opinion and the accompanying Order to plaintiff.

ENTER: This 10th day of January, 2012.

Jackson L. Kiser
Senior United States District Judge